



Signed and Filed: October 7, 2021

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
PG&E CORPORATION,) No. 19-30088-DM
- and -) Chapter 11
PACIFIC GAS AND ELECTRIC COMPANY,) Jointly Administered
Reorganized Debtors.)
☐ Affects PG&E Corporation)
☐ Affects Pacific Gas and)
Electric Company)
☒ Affects both Debtors)
* All papers shall be filed in)
the Lead Case, No. 19-30088 (DM).)

**ORDER DENYING MOTION TO RECONSIDER FILED BY RICKY-DEAN HORTON
AND DISALLOWING PROOF OF CLAIM # 107857**

I. BACKGROUND

Ricky-Dean Horton ("Mr. Horton") is the representative of his deceased brother, Rory-Nelson Horton. On or around September 5, 2016, Rory-Nelson Horton tragically died by electrocution after a pipe being held by him contacted a PG&E conductor. While Mr. Horton submitted a "loss claim form" to PG&E's legal

1 department in August 2018, no civil action was commenced by Mr.
2 Horton or any other representative of Rory-Nelson Horton against
3 PG&E at any time. Following Debtors' bankruptcy filing on
4 January 29, 2019, Mr. Horton filed Proof of Claim # 87111
5 ("Claim") on October 21, 2019 in the amount of \$50,000,000 for
6 the wrongful death of his brother.¹

7 On June 17, 2021, the Reorganized Debtors ("Debtors") filed
8 their *Ninety-Third Omnibus Objection to Claims (No Legal Claims)*
9 ("Objection") (dkt. 10808), alleging in part that the events
10 underlying Mr. Horton's Claim were time-barred by California's
11 2-year statute of limitations for wrongful death claims.
12 Debtors properly served notice of the Objection on Mr. Horton,
13 and Mr. Horton did not respond. On July 22, 2021, the Court
14 entered an *Order Disallowing and Expunging Proofs of Claim*
15 *Pursuant to Reorganized Debtors' Ninety-Third Omnibus Objection*
16 *to Claims (No Legal Liability Claims)* ("Order") (dkt. 10980).

17 On July 28, 2021, Mr. Horton filed Proof of Claim # 107857
18 ("Duplicate Claim"). On August 4, 2021, he filed a *Motion to*
19 *Review and Correct a Possible Mistake to Case Identity, and*
20 *Motion to be Heard, and Motion to Reconsider* ("Motion to
21 Reconsider") (dkt. 11031). On August 18, 2021, he filed
22 additional documents under seal (dkt. 11074) which the Court
23 deemed to be part of Mr. Horton's Motion to Reconsider. The
24 Motion to Reconsider explained that he had missed the deadline
25 to file an opposition to Debtors' Objection because he was
26

27
28 ¹ The Court does not discuss nor make any finding regarding
liability for the death of Rory-Nelson Horton in this Order.

1 acting as the caretaker of his ill mother, but did not address
2 why his Claim would not be time-barred. The Motion to
3 Reconsider also purported to set a hearing on October 8, 2021.
4 The Court deemed this to be a request for hearing, which it
5 removed from calendar and instead set a deadline for the Debtors
6 to respond to the Motion to Reconsider ("Reconsideration Order")
7 (dkt. 11135).

8 Mr. Horton subsequently sent an ex parte letter to the
9 Court (dkt. 11150), questioning the validity of the Court's
10 electronic court filing system and of the authenticity of the
11 Court's Reconsideration Order. The letter also presumed the
12 October 8, 2021 hearing he had attempted to schedule was moving
13 forward. The Court entered an order which clarified that both
14 its electronic filing procedures and the Reconsideration Order
15 were valid, and that there would not be a hearing on October 8,
16 2021 ("Clarification Order") (dkt. 11154).

17 Mr. Horton then filed another motion ("Motion to Strike")
18 (dkt. 11174, 11183) seeking to strike the Court's
19 Reconsideration Order and Clarification Order, to modify
20 Debtor's response deadline, and to set a hearing for October 19,
21 2021. The Motion to Strike claims that the Court's prior Orders
22 were frivolous and unlawful, that the Court has no authority to
23 remove from calendar the October 8, 2021 hearing Mr. Horton
24 previously attempted to set, and that he has an absolute right
25 to such a hearing. The Motion to Strike again insists that the
26 Court's previous Orders are fraudulent because they were entered
27 electronically.

1 On September 10, 2021 Debtors filed an (1) *Opposition to*
2 *Motion for Reconsideration of Ricky-Dean Horton* and (2) *Cross-*
3 *Motion for Disallowance of Proof of Claim No. 107857*
4 (*"Opposition"*) (dkt. 11240). The Opposition argued that Mr.
5 Horton had not presented any argument as to why his claim should
6 not be disallowed, and that the "loss claim form" submitted to
7 PG&E's legal department did not constitute the commencement of
8 an action within the meaning of California's statute of
9 limitations. On September 13, 2021, the Court entered an *Order*
10 *for Further Briefing by Ricky-Dean Horton* (dkt. 11244), which
11 removed the October 19, 2021 hearing date Mr. Horton previously
12 attempted to set, directed Mr. Horton to file any response to
13 the Debtors' Opposition by September 30, 2021, at which time the
14 Court would take the matter under submission, and urged Mr.
15 Horton to consider engaging counsel prior to complying with the
16 deadline. The same day, Mr. Horton filed a *Response to Debtors'*
17 *Dkt 11240 Brief/Memorandum in Opposition to Motion for*
18 *Reconsideration of Ricky-Dean Horton* (dkt. 11245). The Response
19 attempted to re-set a hearing for October 19, 2021, and demanded
20 further briefing from the Debtors. It failed to address why his
21 Mr. Horton's Claim would not be time-barred. On September 14,
22 2021, Mr. Horton filed a document titled *Void of Order within*
23 *Dkt. 11244 by Operation of Law and Motion to Impose Sanctions*
24 *Upon E-Order Filers as Stated Herein* (dkt. 11251). The document
25 appears to be a motion for sanctions upon the Court itself for
26 removing from calendar an October 19, 2021 hearing date Mr.
27 Horton had repeatedly attempted to set.

1 The Court took the matter under submission on September 30,
2 2021. On October 5, 2021, five days after the deadline to
3 respond, Mr. Horton filed a *Motion to Strike Declaration of Anna*
4 *A. Campelle and Motion to Strike Declaration of Stacy Campos*
5 (*"Belated Motion"*) (dkts. 11377, 11378).

6 For the reasons discussed below, the Court denies Mr. Horton's
7 Motion for Reconsideration, disallows the Duplicate Claim in its
8 entirety, and strikes from the record Mr. Horton's Belated
9 Motion.

10 **II. DISCUSSION**

11 "A claim that has been allowed or disallowed may be
12 reconsidered for cause." 11 U.S.C. § 502(j). Reconsideration may
13 be accomplished through application of Federal Rules of Civil
14 Procedure ("FRCP") 59(e) or 60(b), made applicable here through
15 Rules 9023 and 9024 of the Federal Rules of Bankruptcy
16 Procedure. See *Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In*
17 *re Int'l Fibercom, Inc.)*, 503 F.3d 933, 940 (9th Cir. 2007).
18 Neither rule recognizes a motion for reconsideration. *In re*
19 *Captain Blythers, Inc.*, 311 B.R. 530, 539 (9th Cir. BAP 2004).
20 Instead, FRCP 59(e) and 60(b) contemplate a motion to alter or
21 amend a judgment. These rules apply to the setting aside of
22 judgments by default issued pursuant to FRCP 55. In considering
23 whether to set aside a judgment entered by default, a Court must
24 consider "whether the defendant's culpable conduct led to the
25 default; whether the defendant has a meritorious defense; and
26 whether reopening the default judgment would prejudice the
27 plaintiff." *TCI Grp. Life Ins. Plan v. Knoebber*, 244 F.3d 691,
28 696 (9th Cir. 2001).

1 Mr. Horton seeks reconsideration solely on the basis that
2 he inadvertently missed the deadline to respond to Debtor's
3 Objection due to his responsibility for caring for his ill
4 mother. Mr. Horton has not, despite the Court's requests,
5 presented a meritorious defense to the Objection.

6 Claims arising from personal injury or wrongful death are
7 governed by California's two-year statute of limitations. Cal.
8 Code Civ. Proc. § 335.1. Further, Bankruptcy Code section
9 502(b)(1) (11 U.S.C. § 502(b)) provides that a claim may be
10 disallowed if it is unenforceable under applicable non-
11 bankruptcy law, including being barred by the applicable statute
12 of limitations. See *Mesa Pines Homeowner's Assoc. v. Paterno*
13 (*In re Paterno*), No. SC-14-1189-KuJuKi, 2015 Bankr. LEXIS 580,
14 at *9 (9th Cir. BAP Feb. 20, 2015) (citing *Durkin v. Benedor*
15 *Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1281 (9th Cir.
16 2000)).

17 These are well-settled principles that even *pro se* parties
18 should understand and must be held to. Absent some affirmative
19 defense, Mr. Horton is bound by them. At no point in Mr.
20 Horton's numerous filings has he made any argument regarding an
21 affirmative defense to these principles. He has not discussed
22 why the provisions of Cal. Code Civ. Pro § 335.1 may have been
23 tolled, or some other reason why his Claim, though
24 representative of a great loss, is not time-barred. After ample
25 opportunity for explanation, Mr. Horton has provided a
26 reasonable reason for missing the deadline to responding to the
27 Objection but has not provided any cause for which the
28 disallowance of his claim should be reconsidered and set aside.

1 Thus, the most critical factor noted by *Knoebber* - a meritorious
2 defense - is missing. Reconsideration would be futile because
3 the statute of limitations defense by Debtors would control the
4 outcome.

5 **III. CONCLUSION**

6 For the foregoing reasons, the Motion for Reconsideration
7 is DENIED, Proof of Claim # 107857 is DISALLOWED in its entirety
8 (as was Proof of Claim # 87111 already), and Mr. Horton's
9 Belated Motion is STRICKEN from the docket.

10 Mr. Horton is advised again that there will be no hearing
11 on October 19, 2021, or any other date.

12 ****END OF ORDER****

COURT SERVICE LIST

Ricky-Dean Horton
751 Rosemary Court
Fairfield, CA 94533